

Panaji, 14th June, 1996 (Jyaistha 26, 1917)

SERIES I No. 11

OFFICIAL GAZETTE

GOVERNMENT OF GOA

EXTRAORDINARY

No. 2

GOVERNMENT OF GOA

Department of Finance

Revenue and Expenditure Division

Notification

5/9/88-Fin (R&C)/Part II

The following draft amendment which is proposed to be made to the Goa Tax on Luxuries (Hotels and Lodging Houses) Rules, 1988, is hereby pre-published as required by sub-section (3) of section 45 of the Goa Tax on Luxuries (Hotels and Lodging Houses) Act, 1988 (Act 17 of 1988), for information of the persons likely to be affected thereby and notice is hereby given that the said draft amendment will be taken into consideration by the Government on the expiry of 30 days from the date of publication of this Notification in the Official Gazette.

All objections and suggestions to the said draft amendment may be forwarded to the Secretary to the Government of Goa, Finance Department, Secretariat, Panaji, before the expiry of 30 days from the date of publication of this Notification in the Official Gazette.

DRAFT AMENDMENT

In exercise of the powers conferred by section 45 read with sub-section (4c) of section 13 of the Goa Tax on Luxuries (Hotels and Lodging Houses) Act, 1988 (Act 17 of 1988), and all other powers enabling it in that behalf, the Government of Goa hereby makes the following rules so as to amend the Goa Tax on Luxuries (Hotels and Lodging Houses) Rules, 1988, namely:—

1. Short title and commencement.— (1) These rules may be called the Goa Tax on Luxuries (Hotels and Lodging Houses) (Amendment) Rules, 1996.

(2) They shall come into force at once.

2. Amendment of rule 2.—In rule 2 of the Goa Tax on Luxuries (Hotels and Lodging Houses) Rules, 1988 (hereinafter referred to as the "principal Rules"), (i) in clause (p), for the word 'dealer', the word 'hotelier' shall be substituted;

(ii) after clause (p), the following shall be inserted, namely:—

“(pp) ‘Schedule’ means a schedule appended to these rules;”

3. Amendment of rule 11.— In rule 11 of the principal Rules, for sub-rule (1), the following shall be substituted, namely:—

“(1) Such hoteliers who are liable to pay tax and who are required to do so by the appropriate Assessing Authorities by notice in writing and every registered hotelier having monthly luxury tax liability exceeding Rs. 1 lakh shall pay the tax payable under the Act for every month within 15 days from the expiry of each month.

(1A) In respect of every registered hotelier having monthly luxury tax liability not exceeding Rs. 1 lakh, the payment shall be made into appropriate Government Treasury in accordance with the time schedule specified in the Table below:—

TABLE

Categories of the hotelier to whom applicable	Time fixed for payment
(1) In respect of the registered hotelier having monthly luxury tax liability exceeding Rs. 10,000/- but not exceeding Rs. 1 lakh.	Within 30 days from the date of expiry of the month.
(2) In respect of the registered hotelier having monthly luxury tax liability not exceeding Rs. 10,000	(i) Within 30 days from the date of expiry of the quarter in relation to the payments to be effected between April to December every year. (ii) Within 30 days from the expiry of each month in respect of the payments to be effected during the months of January to March every year.

Provided that the hoteliers/hotelier referred to above, may, at their/his option pay for the first and second month of every quarter, 1/3rd of the amount payable for the previous quarter within the stipulated time and may adjust any deficiency or excess arising out of short payment or excess payment (if any) made in the first two months of the quarter in the third month of the same quarter.

Explanation.— For the purposes of sub-rules (1) and (1A), months in respect of registered hotelier who has validly exercised his option and declared his accounting year to be different from the financial year, shall be the month of that year”.

4. Insertion of new rule.— After rule 25 of the Principal Rules, the following rule shall be inserted, namely:—

“25A. Reference to Luxury Tax Officer.— Notwithstanding anything contained in rule 25, the appropriate Assessing Authority may refer any case of recovery to the Luxury Tax Officer, authorised for the purposes by the Commissioner and in the event of so referring the case, the authorised Luxury Tax Officer shall proceed to recover the amount referred to him by following the procedure specified in Schedule I”.

5. Amendment of rule 52.— (i) In sub-rule (1) of rule 52 of the principal Rules,— for item (ii), the following shall be substituted, namely:—

“(ii) Mapusa Ward— Talukas of Bardez and Pernem”;

(ii) after item (vi) the following item shall be inserted namely:—

“(vii) Bicholim Ward— Talukas of Bicholim and Satari”.

SCHEDULE I

(See rule 25A)

PROCEDURE FOR RECOVERY OF TAX

(If recovery proceeding is conducted by Luxury Tax Officers authorised for the purpose)

General Provisions

1. Definitions.— In this Schedule unless the context otherwise requires,—

(a) “certificate” means a certificate received under paragraph 2 of this Schedule by the Luxury Tax Officer authorised by the Commissioner of Luxury Tax for the purpose;

(b) “defaulter” means the assessee or hotelier or any other person mentioned in the certificate;

(c) “execution” in relation to a certificate, means recovery of arrears in pursuance of the certificate;

(d) “movable property” includes growing crops;

(e) “share in a corporation” includes stock, debentures or bonds; and

(f) “Tax Recovery Officer” means the Luxury Tax Officer or any other officer authorised by the Commissioner for the purpose.

2. Issue of Certificate.— (1) Where an assessee or hotelier or any other person is in default or is deemed to be in default in making a payment of tax or any other amount due under the Act, the assessing authority may forward to the Tax Recovery Officer a certificate containing such particulars as may be laid down under his signature specifying the amount of tax and any other amount due from the assessee or hotelier or any other person and the Tax Recovery Officer on receipt of such certificate, shall proceed to recover from such assessee, hotelier or other person the amount specified therein in accordance with the provisions of this Schedule.

(2) The assessing authority may issue a certificate under sub-paragraph (1), notwithstanding that proceedings for recovery of the amount by any other mode has been taken.

3. Issue of notice.— When a certificate has been received by the Tax Recovery Officer from the assessing authority for the recovery of arrears, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default, steps would be taken to realise the amount under this Schedule.

4. When Certificate may be executed.— No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the notice required by the preceding paragraph:

Provided that if the Tax Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable properties as would be liable to attachment or distraint in execution of a decree of a civil court and that the realisation of the amount of the certificate would in consequence be delayed or obstructed, he may at any time for reasons to be recorded in writing, attach or distraint the whole or any part of such property:

Provided further that, if that defaulter whose property has been so attached or distrained, furnishes security to the satisfaction of the Tax Recovery Officer, such attachment or distraint shall be cancelled from the date on which such security is accepted by the Tax Recovery Officer.

5. Mode of Recovery.— If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one or more of the following modes:—

(a) by attachment or distraint and sale of the defaulter’s movable property;

(b) by attachment and sale of the defaulter’s immovable property.

6. Interest, costs and charges recoverable.— There shall be recoverable in the proceedings in execution of every certificate,—

(a) interest at the rate of twenty four percent per annum from the day commencing after the end of the period specified in paragraph 3.

(b) all charges incurred in respect of —

(i) the service of notice upon the defaulter to pay the arrears and of warrants and other processes; and

(ii) all other proceedings taken for realising the arrears.

7. Purchaser's title.— (1) Where the property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the defaulter at the time of the sale, even though the property itself be specified.

(2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser's right, title and interest, shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

8. Suit against purchaser not maintainable on ground of purchase being made on behalf of plaintiff.— (1) No suit shall be maintained against any person claiming title under a purchase certified by the Tax Recovery Officer in the manner laid down in this Schedule on the ground that the purchase was made on behalf of the plaintiff or on behalf of someone through whom the plaintiff claims.

(2) Nothing in this paragraph shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interferes with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

9. Disposal of proceeds of executions.— (1) Whenever assets are realised, by sale or otherwise in execution of a certificate, they shall be disposed of in the following manner;—

(a) there shall first be paid to the assessing authority the costs incurred by him;

(b) there shall, in the next place, be paid to the assessing authority the amount due under the certificate in execution of which the assets were realised;

(c) if there remains a balance after these sums have been paid, there shall be paid to the assessing authority therefrom any other amount recoverable under the procedure provided by the Act and these paragraphs which may be due upon the date upon which the assets were realised; and

(d) the balance if any, remaining after the payment of the amount (if any) referred to in clause (c), shall be paid to the defaulter.

(2) If the defaulter disputes any claim made by the assessing authority to receive any amount referred to in clause (c), the Tax Recovery Officer shall determine the dispute.

10. General bar to jurisdiction of Civil Court, save where fraud alleged.— Except as otherwise expressly provided in the Act and these paragraphs, every question arising between the assessing authority and the defaulter or their representatives, relating to the execution, discharge or satisfaction of a certificate or relating to the confirmation or setting aside of a sale held in execution of such certificates shall be determined, not by suit, but by the order of the Tax Recovery Officer before whom such question arises:

Provided that, a suit may be brought in a civil court in respect of any such question upon the ground of fraud.

11. Property exempt from attachment.— (1) All such property as is by the Code of Civil Procedure, 1908 (Central Act 5 of 1908), exempted from attachment and sale in execution of a decree of civil court, shall be exempt from attachment or distraint and sale under this Schedule.

(2) The Tax Recovery Officer's decision as to what property is so entitled to exemption shall be conclusive.

12. Investigation by Tax Recovery Officer.— (1) Where any claim is preferred to or any objection is made to the attachment, distraint or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment, distraint or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was desig-
nedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applied has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise, as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that,—

(a) in the case of immovable property, at the date of the service of the notice issued under this Schedule to pay the arrears; or

(b) in the case of movable property at the date of the distraint or attachment he had some interest in, or was possessed of, the property in question.

(4) Where, upon the said investigation the Tax Recovery Officer is satisfied that, for the reasons stated in the claim or objection such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other persons, or partly on his own account and for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from distraint or attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute, but subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.

13. Removal of attachment or distraint on satisfaction or cancellation of certificate.— Where,—

(a) the amount due, with costs and all charges and expenses resulting from the attachment or distraint of any property or incurred in order to hold a sale, are paid to the Tax Recovery Officer, or

(b) the certificate is cancelled, the attachment or distraint shall be deemed to be withdrawn and in the case of immovable property, the withdrawal shall, if the defaulter so desires, be proclaimed at his expense and a copy of the proclamation shall be affixed in the manner provided by this schedule for a proclamation of sale of immovable property.

14. Officer entitled to attach distraint and sale.— The attachment or distraint and sale of movable property and the attachment and sale of immovable property shall be made by the Tax Recovery Officer.

15. Defaulting purchaser answerable for loss on resale.— Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending such resale, shall be certified by the Tax Recovery Officer and shall, at the instance of either the assessing authority or the defaulter, be recoverable from the defaulting purchaser under the procedure provided by this Schedule:

Provided that no such application shall be entertained unless filed within fifteen days from the date of resale.

16. Adjournment or stoppage of sale.— (1) The Tax Recovery Officer may, in his discretion, adjourn any sale hereunder to a specified day and hour.

(2) Where a sale of immovable property is adjourned under sub-paragraph (1) for a longer period than one calendar month, a fresh proclamation of the sale under this Schedule shall be made unless the defaulter consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the arrears and cost (including the costs of the sale), are tendered to the Tax Recovery Officer.

17. Private alienation to be void in certain cases.— (1) Where a notice has been served on a defaulter under paragraph 3, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

18. Prohibition against bidding or purchase by Officer.— No Officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

19. Prohibition against sale on holidays.— No sale under this Schedule shall take place on a Sunday or other general holidays recognised by the Government or on any day which has been notified by the Government to be a local holiday for the area in which the sale is to take place.

20. Assistance by police.— The Tax Recovery Officer may apply to the Officer in charge of the nearest police station for such assistance as may be necessary in the discharge of his duties and the authority to whom such application is made shall depute sufficient number of police officers for furnishing such assistance.

21. Warrant.— When any movable property is to be attached or distrained the Tax Recovery Officer shall prepare a warrant under his signature specifying the name of the defaulter and the amount to be realised and cause a copy of the warrant to be served on the defaulter.

22. Attachment.— If, after service of the copy of the warrant, the amount is not paid forthwith, the Tax Recovery Officer shall proceed to attach or distraint the movable property of the defaulter.

23. Property in defaulter's possession.— Where the property proceeded against is movable property (other than agricultural produce), in the possession of the defaulter, it shall be distrained by actual seizure, and the officer shall keep the property in his own custody or the custody of one of his subordinates and shall be responsible for due custody thereof.

Provided that when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the officer may sell it at once.

24. Agricultural produce.— Where the property proceeded against is agricultural produce, it shall be attached by affixing a copy of the warrant—

(a) Where such produce is growing crop on the land on which such crop has grown, or

(b) Where such produce has been cut or gathered on the threshing floor or place for threading out grain or the like or fodder stall, on or in which it is deposited, and another copy on the outer door on some other conspicuous part of house in which the defaulter ordinarily resides, or on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain. The produce shall, thereupon, be deemed to have passed into the possession of the Tax Recovery Officer.

25. Provisions as to agricultural produce under attachment.— (1) Where agricultural produce is distrained, the Tax Recovery Officer shall make such arrangements for the custody watching tending, cutting and gathering thereof as he may deem sufficient.

(2) Subject to such conditions as may be imposed by the Tax Recovery Officer in this behalf, either in the order of attachment or in any subsequent order, the defaulter may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it and, if the defaulter fails to do on or any of such acts, any person appointed by the Tax Recovery Office in his behalf may, subject to the like conditions, do all or any of such acts, and the costs incurred by such person shall be recoverable from the defaulter as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been served from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Tax Recovery Officer may, suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored, shall not be attached under this paragraph at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

26. Debts and shares, etc.— (1) In the case of —

- (a) a debt not secured by a negotiable instrument,
- (b) a share in a corporation, or
- (c) other movable property not in the possession of the defaulter except property deposited in or in the custody of, any court,

it shall be attached and the attachment shall be made by a written order prohibiting,—

- (i) in the case of debt,— the creditor from recovering the debt, and the debtor from making payment thereof until the further order of the Tax Recovery Officer;
- (ii) in the case of a share, — the person in whose name the share may be standing, from transferring the same or receiving any dividend thereon;
- (iii) in the case of any other movable property (except as aforesaid),— the person in possession of the same, from giving it over to the defaulter.

(2) A copy of such order shall be affixed at some conspicuous part of the office of the Tax Recovery Officer, and another copy shall be sent in the case of the debt to the debtor or in the case of the share, to the proper officer of the corporation and in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (1) of sub-paragraph (1) may pay the amount of his debt to the Tax Recovery Officer and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

27. Attachment of decrees.— (1) Where the property proceeded against is a decree of a civil court for the payment of money or for sale is enforcement of a mortgage or charge, it shall be attached and attachment shall be made by the issue to the civil court of a notice requesting the civil court to stay the execution of the decree unless and until—

- (i) The Tax Recovery Officer cancels the notice, or
- (ii) The assessing authority or the defaulter applies to the court receiving such notice to execute the decree.

(2) Where a civil court receives an application under clause (ii) of sub-paragraph (1), it shall, on the application of the assessing

authority or the defaulter and subject to the provisions of the Code of Civil Procedure, 1908 (Central Act 5 of 1908), proceed to execute the attached decree, and apply the net proceeds in satisfaction of the certificate.

(3) The assessing authority shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

28. Share in movable property.— Where the property proceeded against consists of the share or interest of the defaulter in movable property belonging to him and another as co-owners, it shall be attached and the attachment shall be made by a notice to the defaulter prohibiting him from transferring the share or interest or charging it in any way.

29. Attachment of negotiable instrument.— Where the property is a negotiable instrument not deposited in a court nor in the custody of a public officer, it shall be distrained by the Tax Recovery Officer.

30. Attachment of property in custody of Courts or Public Officer.— Where the property proceeded against is in the custody of any court or public officer, it shall be attached and the attachment shall be made by a notice to such court or officer requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Tax Recovery Officer by whom the notice is issued:

Provided that, where such property is in custody of a court any question of title or priority arising between the assessing authority and any other person, not being the defaulter, claiming to be interested in such property by virtue of assignment, attachment or otherwise shall be determined by such court.

31. Attachment of partnership property.— (1) Where the property proceeded against consists of an interest of the defaulter being a partner, in the partnership property, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may become due to him in respect of the partnership, and direct that any audit account or enquiries if any, be effected and make an order for the sale of such interest or such other order as the circumstances of the case may require.

(2) The other partners shall be at liberty at any time to redeem the interest charged or, in the case of sale being directed to purchase the same.

32. Value of property.— In the case of distraint, the seizure shall not be excessive, that is to say, the property seized shall be as nearly as possible proportionate to the amount specified in the warrant.

33. Inventory.— In the case of distraint of movable property by actual seizure, the Tax Recovery Officer shall, after seizure of the property, prepare an inventory of all the property attached, specifying in it the place where it is lodged or kept, and a copy of the inventory shall be delivered to the defaulter.

34. Seizure between sun-rise and sun-set.— Attachment by seizure shall be made after sun-rise and before sun-set and not otherwise.

35. Power to break open door etc.— The Tax Recovery Officer may break open any inner or outer door of any building and enter any building in order to seize any movable property if he has reasonable grounds to believe that such building contains movable property liable to seizure under the warrant and he has notified his authority and intention of breaking open if admission is not given. He shall, however, give all reasonable opportunity to women to withdraw.

36. Sale.— The Tax Recovery Officer may direct that any movable property attached or distrained under this Schedule or such portion thereof as may be necessary to satisfy the certificate, shall be sold.

37. Issue of proclamation.— When any sale of movable property is ordered by the Tax Recovery Officer, the Tax Recovery Officer shall issue a proclamation in the language of the District, of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

38. Proclamation how made.— (1) Such proclamation shall be made by beat of drum or other customary mode —

(a) in the case of property distrained, —

(i) in the village in which the property was seized or if the property was seized in a town or city, then in the locality in which it was seized; and

(ii) at such other places as the Tax Recovery Officer may direct.

(b) in the case of property attached otherwise than by distraint, in such places, if any, as the Tax Recovery Officer may direct.

(2) A copy of the Proclamation shall also be affixed in a conspicuous part of the Office of the Tax Recovery Officer.

39. Sale after fifteen days.— Except where the property is subject to speedy and natural decay or when the expenses of keeping it in custody is likely to exceed its value, no sale of movable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiry of at least fifteen days calculated from the date on which a copy of the sale-proclamation was affixed in the Office of the Tax Recovery Officer.

40. Sale of Agricultural Produce.— (1) Where the property to be sold is agricultural produce the sale shall be held, —

(a) if such produce is a growing crop on or near the land on which such crop has grown, or

(b) if such produce has been cut or gathered at or near the threshing floor or place of threading out grain or the like, or fodder stock on or in which it is deposited:

Provided that the Tax Recovery Officer may direct that the sale to be held at the nearest place of public resort, if he is of the opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale —

(a) a fair price, in the estimation of the Tax Recovery Officer is not offered for it, and

(b) the owner of the produce, or a person authorised to act on his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day,

the sale shall be postponed accordingly, and shall be then completed, at whatever price may be offered for the produce.

41. Special provisions relating to growing crops.— (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed so as to admit of the crops being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe stage (e.g. as green wheat), it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of ending or cutting or gathering the crop.

42. Sale to be by auction.— The property shall be sold by public auction in one or more lots as the Tax Recovery Officer may consider advisable and if the amount to be realised by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder of the lots.

43. Sale by public auction.— (1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the Tax Recovery Officer directs and in default of payment, the property shall forthwith be re-sold.

(2) On payment of the purchase money, the Tax Recovery Officer shall grant a certificate specifying the property purchase, the price paid and the name of the purchaser and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the defaulter and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

44. Irregularity not to vitiate sale but any person injured may sue.— No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a civil court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

45. Negotiable instruments and shares in a corporation.— Notwithstanding anything contained in this Schedule, where the property to be sold is a negotiable instrument or a share in a corporation, the Tax Recovery Officer may, instead of selling it by public auction, sell such instrument or share through a broker.

46. Order for payment of coin or currency notes to the Tax Recovery Officer.— Where the property attached or distrained is current coin or currency notes, the Tax Recovery Officer may, at any time, during the continuance of the attachment or distraint, direct that such coin or notes, as may be sufficient to satisfy the certificate, be paid over to the assessing authority.

Attachment and sale of Immovable Property.

47. Attachment.— Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

48. Service of notice of attachment.— A copy of the order of attachment shall be served on the defaulter.

49. Proclamation of attachment.— The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode and a copy of the order shall be affixed at a conspicuous part of the property and on the notice board of the Office of the Tax Recovery Officer.

50. Attachment to relate back from the date of service of notice.— Where any immovable property is attached under this Schedule, the attachment shall relate back to and take effect from the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter.

51. Sale and Proclamation of sale.— (1) The Tax Recovery Officer may direct that any immovable property which has been attached or such portion thereof as may deem necessary to satisfy the certificate, shall be sold.

(2) Where any immovable property is ordered to be sold the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district.

52. Contents of proclamation.— A proclamation of sale of immovable property shall be drawn after notice to the defaulter, and shall state the time and place of sale and shall specify, and accurately possible,—

- (a) the property to be sold;
- (b) the revenue, if any, assessed upon the property or any part thereof;
- (c) the amount for the recovery of which the sale is ordered, and
- (d) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of property.

53. Mode of making proclamation.— (1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of proclamation shall be affixed at a conspicuous part of the property and also upon a conspicuous part of the Office of the Tax Recovery Officer.

(2) Where the Tax Recovery Officer so directs, such proclamation shall also be published in the Official Gazette or a local newspaper, or in both; and the cost of such publication shall be deemed to be costs of the sale.

(3) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Tax Recovery Officer otherwise be given.

54. Time of sale.— No sale of immovable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiration of at least thirty days calculated from the date on which a copy of the proclamation of the sale has been affixed on the property or in the Office of the Tax Recovery Officer, whichever is later.

55. Sale to be by auction.— The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer.

56. Deposit by purchaser and re-sale in default.— (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent of the amount of his purchase money, to the Tax Recovery Officer and in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

57. Procedure in default of payment.— In default of payment within the period mentioned in the preceding paragraph the deposit may, if the Tax Recovery Officer thinks fit, after defraying expenses of the sale, be forfeited to the Government and the property shall be re-sold and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

58. Authority to bid.— All persons bidding at the sale shall be required to declare whether they are bidding on their own behalf or on behalf of their principals. In the latter case, they shall be required to deposit their authority, and in default their bids shall be rejected.

59. Application to set aside sale of immovable property on deposit.— Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may at any time within thirty days from date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing,—

- (a) for payment to assessing authority, the amount specified in the proclamation of sale for the recovery of which the sale was ordered, with interest thereon at the rate of eighteen percent per annum calculated from the date of the proclamation of sale to the date when the deposit is made; and
- (b) for payment to the purchaser, as penalty, a sum equal to five per cent, of the purchase money but not less than one rupee.

(2) Where a person makes an application under paragraph 60 for setting aside the sale of his immovable property, he shall not, unless he withdraws application, be entitled to make or prosecute an application under this paragraph.

60. Application to set aside sale of immovable property on ground of non-service of notice of irregularity.— Where immovable property has been sold in execution of a certificate, the assessing authority, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale;

Provided that:—

- (a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and
- (b) an application made by a defaulter under this paragraph shall be disallowed unless the applicant deposits the amount recoverable from him in execution of the certificate.

61. Setting aside sale where defaulter has no saleable interest.— At any time within thirty days of the sale, the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.

62. Confirmation of sale.— (1) Where no application is made for setting aside the sale under the foregoing paragraphs or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall (if the full amount of the purchase-money has been paid), make an order confirming the sale; and thereupon the sale shall become absolute.

(2) Where such application is made and allowed and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to the persons affected thereby.

63. Return of purchase money in certain cases.— When a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty, if any, deposited for payment to the purchaser, and such interest as the Tax Recovery Officer may allow, shall be paid to the purchaser.

64. Sale Certificate.— (1) Where a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall state the date on which the sale become absolute.

65. Postponement of sale to enable defaulter to raise amount due under certificate.— (1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the Certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorising him, within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the defaulter, but to the Tax Recovery Officer:

Provided also that no mortgage, lease or sale under this paragraph shall become as absolute until it has been confirmed by the Tax Recovery Officer.

66. Fresh proclamation before re-sale.— Every re-sale of immovable property, in default of payment of the purchase money within the period allowed for such payment, shall be made after the issue of fresh proclamation in the manner and for the period hereinbefore provided for the sale.

67. Bid of co-sharer to have preference.— When the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively, bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

68. Power to take evidence.— Every Tax Recovery Officer or other officer acting under this Schedule shall have the powers of civil court while trying a suit for the purpose of receiving evidence administering oaths, enforcing the attendance of witness and compelling the production of documents.

69. Appeals.— (1) An appeal from any original order passed by the Tax Recovery Officer under this Schedule not being an order which is conclusive, shall be with the Assistant/Dy. Commissioner of Luxury Tax.

(2) Every appeal under this paragraph shall be presented within thirty days from the date of the order appealed against.

(3) Pending the decisions of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise.

70. Review.— Any order passed under this Schedule, after notice to any persons interested, be reviewed by the officer who made the order, or by his successor in office, on account of any mistake apparent from the record.

71. Recovery from surety.— Where any person has under this Schedule become surety for the amount due by the defaulter, he may be proceeded against under this Schedule as if he were the defaulter.

72. Saving regarding charge.— Nothing in this Schedule shall affect any provision of the Act hereunder the tax being a first charge upon any asset."

By order and in the name of the Governor or Goa.

S. V. Madkaikar, Under Secretary (Fin-Exp.).

Panaji, 10th June, 1996.